



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

March 13, 2007

Mr. David L. Smith
City Attorney
City of Tampa
315 East Kennedy Boulevard
5th Floor
Tampa, FL 33602

Dear Mr. Smith:

Thank you for your letter regarding the City of Tampa's franchise negotiations with Verizon.

You expressed concern that the official record for the Commission's proceeding on the video franchising process accurately reflects the negotiations between the parties. Please be assured that the official record reflects Verizon's comments, the City of Tampa's reply comments and Verizon's errata correcting a paragraph contained in its original filing. Specifically, the filings state: (1) the City of Tampa "demanded that Verizon meet the incumbent cable operator's cumulative payments for PEG, which would exceed \$6 million over 15 years of Verizon's proposed franchise term," Verizon Comments at 65, and Tampa Reply Comments at 5, and (2) that "[w]hen Verizon rejected this demand and asked for an explanation, the LFA provided a summary 'needs assessment' in excess of \$13 million for both PEG support and equipment for an expansion of its I-Net," Verizon Revised Comments, filed March 6, 2006, at 65, and Tampa Reply Comments at 5.

In addition, I note that in your January 5th letter, you indicate that, "No requirement was made of Verizon to film math tutoring sessions in order to obtain a franchise agreement. In fact, no discussion of a requirement to film math tutoring sessions entered into the negotiations with Verizon." Again in conclusion you emphasize that no such "requirement" was suggested.

I do note however, that in a January 29th, 2007, Associated Press story you confirmed that the City of Tampa, "gave Verizon a \$13 million 'needs assessment' that he [you] say[s] was required by law in order to obtain contributions for equipment for public access and government channels." The AP story goes on to say that you said "it is possible the 'needs assessment' included video cameras to film shows such as the math class, but that there was never 'a specific quid pro quo.'" You are quoted as saying,

"Even if it was on the needs list as one of the items, that doesn't mean that's how the money would be spent." It appears that while not "a specific quid pro quo" or a "requirement," you have publicly acknowledged "it is possible" that "video cameras to film shows such as the math class" were "included" as part of the "needs assessment" that was given to Verizon by the City of Tampa.

I appreciate your help in clarifying this issue.

Sincerely,



Kevin J. Martin

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January 29, 2007 Monday 4:03 AM GMT

SECTION: BUSINESS NEWS

LENGTH: 1237 words

HEADLINE: Local Governments: FCC Not Playing Fair

BYLINE: By JOHN DUNBAR, Associated Press Writer

DATELINE: WASHINGTON

BODY:

The nation's chief telecommunications regulator stands accused of misrepresenting the facts while pushing through rules that will make it easier for big phone companies to get into cable television.

The policy change won approval by the Federal Communications Commission on a 3-2 vote Dec. 20. That angered local government officials who claim the agency overstepped its authority and now promise a legal challenge. The vote also drew the threat of a "legislative fix" from a powerful congressman.

The new rules are meant to spur more competition for cable television providers. They require local governments to speed up the approval process for new competitors, cap the fees paid by new entrants and ease requirements that competitors build systems that reach every home.

Consumer groups long have complained about rising cable rates and poor service, blaming the problems on a lack of competition.

But opponents of the FCC's action say the new rules amount to a "federalization" of the cable franchising process. They contend the change will mean a loss of local oversight, fewer dollars for public and government access channels and the possibility of "cherry picking" by companies that choose to serve only the richest neighborhoods.

Supporters of the policy change have cited dozens of instances in which local governments have made unreasonable demands of new competitors, effectively blocking them from offering service.

It was one of those claims that raised the ire of David L. Smith, the city attorney in Tampa, Fla. He said the FCC chairman, Kevin Martin, made a "blatantly inaccurate allegation" about Tampa's conduct during franchise negotiations with Verizon Communications Inc.

Martin was quizzing an agency employee during a commission meeting before casting his vote when he asked: "Is Verizon still required to film the tutoring classes for the math classes in Tampa, Florida in order to get a franchise?"

Rosemary Harold, a deputy chief in the FCC's Media Bureau, answered, "Yes, Mr. Chairman."

Harold was put on the spot earlier by commissioner Jonathan Adelstein, who voted against the FCC proposal. Adelstein asked Harold to cite "specific communities" that are "particularly having a problem right now" in gaining a franchise.

Smith, who negotiated with Verizon in Tampa, says Martin's allegation neither was in nor a condition of the franchise agreement. Martin's characterization, the lawyer said, was "complete and abject fiction."

Smith also said the FCC had never contacted him about the claim.

In an interview Friday, Martin said he probably should not have used the word "still" but largely stood by his argument that Tampa was making an unreasonable demand of Verizon. He said he had not responded to Smith's letter, but would do so.

"These are difficult issues," he said. "I think the commission is trying to find a balance between protecting the local communities' interest but also making sure they are not effectively pre-empting the ability (of new companies) to get in and compete."

The dispute raises a larger question about whether the agency should investigate specific allegations made by companies that stand to benefit from rules or simply assume that they are true.

Adelstein, a Democrat, accused his agency of failing to "conduct any independent fact-finding" and said the FCC did not "attempt to verify the allegations made by parties who have a vested interest in the outcome of this proceeding."

He accused Martin and the two other Republican commissioners who voted in favor of the new rules of presuming that "in every case that the big phone companies are right and the local governments are wrong."

FCC spokeswoman Tamara Lipper said it would be "impossible for the commission to independently vet every single one of the millions of comments that inform our rule-making."

She said the agency issues public notices and posts specific comment and reply comment periods to "ensure all sides of an issue have the opportunity to weigh in." If someone knowingly submits false information in the record, he can be "subject to disciplinary action," she added.

The stakes in this battle are high.

Companies such as Verizon and AT&T are spending billions of dollars to lay fiber-optic cable in their service areas in the hope they will be able to compete with the cable television industry.

The Tampa allegation outlined by Martin first appeared in a Wall Street Journal story in October 2005 that painted a sympathetic portrait of Verizon's travails in gaining franchises.

The account said Verizon, seeking permission to offer TV service in Tampa, was presented with "a \$13 million wish list" of items it needed, including "video cameras to film a math-tutoring program for kids."

The story stated that "Verizon lawyers saw it as a demand."

Less than a week after the story ran, the FCC opened its proceeding on video franchising.

Smith said Tampa gave Verizon a \$13 million "needs assessment" that he says was required by law in order to obtain contributions for equipment for public access and government channels. The city's existing cable franchise, Bright House Networks, had paid \$5.5 million and pledged \$1 million more, he said.

Smith also said under Florida law, a competitor would be required to match that amount to obtain a franchise.

He said it is possible the "needs assessment" included video cameras to film shows such as the math class, but that there was never "a specific quid pro quo." Nor was anything like that mentioned in the franchise agreement, he said.

"Even if it was on the needs list as one of the items, that doesn't mean that's how the money would be spent," he added.

Oddly enough, Verizon mentions the tangle with Tampa in its comments with the FCC, but does not name the city nor does it reference the math program. It did, however, revise its comments and apologize after a complaint from Tampa about how the company represented the negotiations.

AT&T, however, listed the newspaper story in its FCC filing as part of 37 pages of examples of local communities erecting barriers to competitors.

In addition to dealing with angry local governments, the agency's video franchise decision faces other challenges.

Rep. John Dingell, chairman of the House Energy and Commerce Committee, said through a spokeswoman that he believes the agency overstepped its authority.

Dingell, D-Mich., was chairman and played a central role in passing cable laws in 1984 and 1992 that the agency analyzed in making its decision.

Spokeswoman Jodi Seth said Dingell "does not believe that the law allows the FCC to drastically reduce the ability of a local government to protect its citizens." She said Dingell plans to "review the FCC's action in the course of the committee's oversight this year. At that point, he may decide that a legislative fix is necessary."

Local Governments: FCC Not Playing Fair Associated Press Online January 29, 2007 Monday 4:03 AM GMT

Meanwhile, local governments are readying for a legal fight.

The National Association of Telecommunications Officers and Advisors, a trade group that represents local governments on cable franchising issues, has hired a law firm to challenge the decision. The group is joined by the National League of Cities, the National Association of Counties and others.

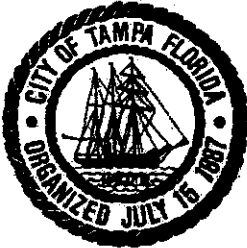
A court challenge cannot take place, however, until the FCC releases the final version of the new rules. That is expected soon.

On the Net:

Federal Communications Commission: <http://www.fcc.gov>

National Association of Telecommunications Officers and Advisors: <http://www.natoa.org/>

LOAD-DATE: January 29, 2007



CITY OF TAMPA

Pam Iorio, Mayor

Office of the City Attorney

David L. Smith
City Attorney

January 5, 2007

The Honorable Kevin Martin, Chairman
Federal Communications Commission
445 - 12th Street, SW
Washington, DC 20554

RE: FCC Rules to Ensure Reasonable Franchising Process for New Video Market Entrants

Dear Chairman Martin:

I was disappointed to hear the question you read into the record for your staffer on December 20th before the Commission, as well as her blatantly inaccurate response, affirming that Tampa required Verizon to film math tutoring sessions in order to obtain a video franchise agreement. Your question was a leading one thereby presupposing the answer. I cannot imagine where you or the FCC obtained such errant information, as it has no basis in fact. How disappointing it was to learn that such a venerable institution as the FCC would embrace as truth an allegation in a rulemaking that has such far-reaching implications to so many, without doing any follow-up with the jurisdiction named to confirm its accuracy.

No requirement was made of Verizon to film math tutoring sessions in order to obtain a franchise agreement. In fact, no discussion of a requirement to film math tutoring sessions entered into the negotiations with Verizon, which were successfully completed in May of 2006. The franchise agreement is readily available for public reference on the City of Tampa's Cable Communication website: [http://www.tampagov.net/dept/Cable Communications/verizon cable franchise.asp](http://www.tampagov.net/dept/Cable%20Communications/verizon%20cable%20franchise.asp) where it can be easily confirmed that no such requirement was made. Additionally, math tutoring would fall into the category of programming. The City of Tampa produces most of its own government access programming and none is required of either cable/video franchisee. The City of Tampa has no control over programming on either the education or public access channels, so such a "requirement" would not have been suggested.

I am sure that you do not wish to further promulgate a blatantly inaccurate allegation. Consequently, I respectfully request that the official record be corrected and the misinformation provided in the December 20th meeting noted above be retracted. I assume you would also be interested in determining the source of the false testimony provided to your Commission. I am sure the integrity of the process is important to you. I know it will be to Congress. Thank you for your consideration in this regard.

Very truly yours,

David L. Smith
City Attorney

cc All Commissioners of the Federal Communications Commission
City of Tampa Mayor Pam Iorio
Nick Miller, Esquire
Sharon Fox, City of Tampa, Tax Revenue Coordinator, Revenue and Finance
Mindy Snyder, City of Tampa, Cable Television Manager, Cable Communications
Alan Ciamporero, Vice President Southeast Region, Verizon

315 East Kennedy Blvd., 5th Floor • Tampa, Florida 33602 • (813) 274-8996 • FAX: (813) 274-8809

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